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OFFICE OF PETITIONS

In re Application of
Nakamura, et al.
Application No. 09/355,946
Filed: August 16, 1999
Attorney Docket No. MIY-9007

DECISION ON PETITION

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b), filed September 12, 2002, and the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed January 6, 2003.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed November 5, 2001, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 6, 2002. A Notice of Abandonment was mailed on August 27, 2002. Applicant filed a petition to revive under 37 CFR 1.137(b) on September 12, 2002. After a telephone interview with the Petitions Attorney, applicant filed a petition to withdraw the holding of abandonment on January 6, 2003.

Petitioner, from the firm of Rader, Fishman & Grauer, attests that he never received the final Office action mailed November 5, 2001. That Office action was mailed to the firm of Nikaido, Marmelstein, Murray and Oram. On November 14, 2001, after the final Office action was mailed, applicant filed an Associate Power of Attorney and Change of Correspondence Address, directing that correspondence in the above-identified application be forwarded to Rader, Fishman, & Grauer. The Notice of Abandonment mailed August 27, 2002 was mailed to Rader, Fishman, & Grauer.

Petitioner stated in his September 12, 2002 petition that a designated employee checked on a daily basis for correspondence sent to the previous address. However, petitioner did not include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed. Petitioner filed a petition to withdraw the holding of abandonment on January 6, 2003. With that petition, petitioner

included a statement that the Office action was not received at the correspondence address of record (the previous firm), as well as attested that "a significant amount of correspondence mailed by the United States Patent and Trademark Office between October 13, 2001 and January 2, 2002 has not been received at this address."

In view thereof, **the holding of abandonment is withdrawn.**

The petition fee of \$1,280 has been refunded to Deposit Account No. 18-0013.

The application file is being forwarded to Technology Center 1700, Group Art Unit 1733, for remailing of the November 5, 2001 final Office action, setting a new period for reply.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo
Petitions Attorney
Office of Petitions